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DE RUEHJA #1604/01 2680651
ZNY CCCCC ZZH
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FM AMEMBASSY JAKARTA
TO RUEHC/SECSTATE WASHDC IMMEDIATE 3398
INFO RUCNARF/ASEAN REGIONAL FORUM COLLECTIVE PRIORITY
RUEAIIA/CIA WASHDC PRIORITY
RUEATRS/DEPT OF TREASURY WASHDC PRIORITY
RHEHNSC/NSC WASHDC PRIORITY
RUEAWJA/DEPT OF JUSTICE WASHDC PRIORITY
RHMCSUU/FBI WASHINGTON DC PRIORITY

C O N F I D E N T I A L SECTION 01 OF 02 JAKARTA 001604

SIPDIS

DEPT FOR EAP, EAP/MTS, EAP/MLS, EAP/RSP, INL, S/CT; INL FOR
CARLON; S/CT FOR MAHANTY; DOJ FOR CRIM AAG SWARTZ;
DOJ/OPDAT FOR ALEXANDRE/BERMAN/JOHNSON; NSC FOR E.PHU

E.O. 12958: DECL: 09/25/2019

TAGS: [ID](#) [PGOV](#) [PREL](#) [PTER](#)

SUBJECT: DOES INDONESIA NEED A TWO YEAR EXTRAJUDICIAL
DETENTION REGIME?

REF: A. JAKARTA 1470

[B](#). KUALA LUMPUR 633

Classified By: DEPUTY CHIEF OF MISSION TED OSIUS, REASONS: 1.4 (b) & (d)
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[1](#)1. (C) SUMMARY: The Indonesian Parliament has recently proposed amending the terrorism law to permit two year police detention without the filing of charges. Such a provision, similar to the Internal Security Acts in Malaysia and Singapore, does not appear necessary and may prove counterproductive in combating terrorism. It may also trigger a societal backlash and undermine Indonesia,s progress toward rule of law. End Summary.

[1](#)2. (C) On August 31, 2009, Indonesia,s parliament discussed a series of anti-terrorist measures, the most controversial of which was a proposal to detain terrorism suspects by the Indonesian National Police (INP) for up to two years without judicial review (reftel A). Ansyad Mbai, Chief of the Counterterrorism Desk at the Coordinating Ministry for Political, Legal, and Security Affairs, stated that the current seven-day period was "an insufficient amount of time" for investigations to take place and that the two-year period, like that established by Malaysia's Internal Security Act, would allow the INP sufficient time to conduct full, effective investigations.

[1](#)3. (SBU) Under current Indonesian law, in terrorism cases, the INP may hold suspects up to seven days before providing preliminary evidence demonstrating the terrorists, criminal activities. The INP, however, have an additional four months to conduct the investigation after arrest before referring the case to the prosecutors at the Attorney General,s Office for the filing of formal charges, and ultimately a public trial.

[1](#)4. (SBU) Indonesia has consistently secured convictions of terrorists through the established legal system. Since its creation in 2006 with USG support, the Attorney General's Office (AGO) Terrorism and Transnational Crime Task Force has convicted all sixty-four terrorists, including forty-three Jamaah Islamiyah (JI) members, in the public courts. While there has been some criticism of the length of sentences for some of these terrorists, none have received sentences under two years, imprisonment.

[1](#)5. (C) An extrajudicial detention regime might not further counterterrorism goals. Due to enhanced cooperation in recent years between the AGO Task Force and Detachment 88, Indonesia,s counterterrorism police, there are fewer major

JI operatives that the police are failing to arrest out of fear that there is insufficient evidence to secure a conviction. Sidney Jones, Indonesian counterterrorism expert for the International Crisis Group, noted that it is possible that Ubaid might fall into this category, but she noted that such arrests might perversely undermine the police's quiet deradicalization strategy to flip JI members, whose information has been used to catch other JI terrorists. She expressed her view privately that such a law would be a terrible idea apart from its rule of law implications - essentially no more than a political band-aid that would encourage the police simply to round up suspects, rather than engage in the harder but more important work of dismantling the JI organization.

¶6. (C) The creation of an extrajudicial detention regime without public charges for up to two years carries with it other collateral dangers. An Internal Security Act can become a tool of political suppression and, as neighboring Malaysia has experienced firsthand last month, lead to large scale public demonstrations and mass arrests (ref B). There is no guarantee that the two year extrajudicial detention would be limited to JI and JI-like terrorists. In Papua and Aceh, for example, Detachment 88 is already active in making arrests, suggesting the provision could be used against separatists and others suspected of committing crimes more political in nature under the rubric of combating terrorism.

¶7. (C) Public trials of terrorists also promote a valuable societal goal - they serve as transparent statements

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condemning terrorist's actions. By contrast, secretive detention proceedings would feed conspiracy theories regarding the nature of Indonesia's counterterrorism efforts.

¶8. (SBU) A two year extrajudicial detention regime also appears to be at odds with Indonesia's international rule of law obligations. Indonesia acceded to the International Covenant on Civil and Political Rights (ICCPR) in 2005. Article Nine of the ICCPR requires that any person arrested "shall be brought promptly before a judge" or other competent judicial officer. The term "promptly" has generally been interpreted to mean within two days.

¶9. (C) Not all Indonesia's law enforcement community appears to be firmly behind the extrajudicial detention procedure. The day after the parliamentary hearing, Attorney General Hendarman Supandji expressed his concerns to the DOJ/OPDAT Resident Legal Advisor that Indonesia needed to focus on non-punitive approaches to combat terrorism. Gories Mere, Chief of the National Narcotics Board, was more direct in a September 16 meeting with the DCM. Mere stated that while Indonesia needed a broader conspiracy law and expanded arrest authority, a Malaysian-style Internal Security Act would "take away democratic aspects and that would not be in line with legislation."

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